

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:07CV280-1-MU

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|-----------------------|---|
| JONTA HAMPTON-BEY, |) |
| |) |
| Petitioner, |) |
| |) |
| v. |) |
| |) |
| RICK JACKSON, admin., |) |
| |) |
| Respondent. |) |
| |) |

O R D E R

THIS MATTER comes before the Court upon Petitioner's "Motion to Modify the Forgoing Instrument Raised Herein," filed July 9, 2007.

In Petitioner's filing he requests that the Court issue an order releasing him from DOC custody. It appears that he bases his request upon his membership with the Moorish Science Temple of America, Inc. The Court notes that it is difficult to discern the precise nature of Petitioner's filing. He has no case pending before this Court. However, because he requests that this Court order him released from state custody, this Court finds Petitioner's filing to be most closely analogous to a federal habeas petition and has characterized it as such.¹ Consequently, this Court will construe his filing as a federal habeas petition pursuant to 28 U.S.C. § 2254.

Rule 3(a) of the Rules Governing Section 2254 Cases in the United States District Courts

¹ This Court finds that the Court of Appeals for the Fourth Circuit's recent decision in United States v. Emmanuel, 288 F.3d 644 (4th Cir. 2002), is distinguishable because, unlike in the Emmanuel case, this dismissal is without prejudice and in and of itself does not preclude Petitioner's filing of a subsequent petition. Id. at 650 (no notice required where recharacterization has no adverse impact on movant).

requires that a petitioner's petition must be accompanied by the applicable filing fee or a motion for leave to proceed in forma pauperis. Petitioner has not paid the filing fee. Nor has Petitioner filed a Motion for In Forma Pauperis Status. As such, Petitioner has failed to comply with Rule 3.

In addition, the Court notes that Petitioner has also failed to comply with Rule 2(d) of the Rules Governing Section 2254 Cases in the United States District Courts which requires that a petition must substantially follow either the form appended to the rules or a form prescribed by a local district-court rule. Petitioner's filing does not conform to any form.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's "Motion to Modify the Foregoing Instrument Raised Herein" which is construed as a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 is **DISMISSED** without prejudice.

Signed: July 18, 2007



Graham C. Mullen
United States District Judge

